

Remarks:

In the January 15, 2008, Office Action, Claims 1, 4-7, 10-37 were rejected under 35 U.S.C. 112, first paragraph, for reciting the term "said hides or skins being free of animal blood". In addition, Claims 32, 34 and 36 were rejected under 35 U.S.C. 102(b) as being anticipated or, in the alternative, under 35 U.S.C. 103(a) as obvious over Coody (US Patent 5007194), Yearley (US Patent 2102052) and Carr (US Patent 4463018).

Claims 1, 4-7, 10-29, 31-37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. (US Patent 3964203 and Carr (US Patent 4463018) in view of Pfeiderer et al. (US Patent 4484924), Hague et al. (US Patent 6827041) and Talty et al. (US Patent 3408918) and further in view of Thiele (US Patent 4224028). Claim 30 was rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. (US Patent 3964203) and Carr (US Patent 4463018) in view of Pfeiderer et al. (US Patent 4484924), Hague et al. (US Patent 6827041) and Talty et al. (US Patent 3408918) and further in view of Gould (US Patent 3670534) and Holdsworth (US Patent 3913360).

Applicant respectfully traverses the Section 112 rejection of Claims 1, 4-7 and 10-37. The originally filed specification fully supports the term "substantially free of animal blood". In particular, the originally-filed specification describes a detailed process of treating fresh/stored animal hides or skins to form crustacean bait, see paragraph [0027]. As described in paragraphs [0030] and [0031], the hides are thoroughly rinsed and mixed to remove dirt, manure and soil. As recited therein, "optionally, detergent may also be added to the mixing device in an add detergent step 32 if the hides are extremely soiled and dirty. Applicant asserts that one skilled in the art recognizes that "soil and dirty" will include blood or blood residue on animal hides. It is this type of soil that is removed during those steps.

Further, the cleaned hides are then treated to remove all hair using an alkali solution soaking step. As recited in paragraphs [0032]-[0034], the alkali solution if of sufficient strength to break down the proteins in the fibrous structure of the hides, softening the hides. Alkali treatment of this nature would certainly remove any residual blood protein remaining on the hides. Accordingly, Applicant asserts that the specification discloses as a step in its method, rinsing the hides and skins so that they are free of the blood of the animal. In light of the above

explicit support in the specification, Applicant respectfully that the 35 U.S.C. 112, first paragraph, rejection of the claims be withdrawn.

Applicant next notes that the present method is directed to making crustacean bait suitable for use in crustacean traps and pots. As discussed in the Background of the Invention, crustacean bait used in pots or traps differs from other bait in that it remains in the ocean water for extended periods of time within the trap. Bait or lures are secured to hooks and are quickly removed from the water when a catch is made. Crustacean bait is designed for live traps that store multiple live crustacean at once over a period of a week or more, with the catch remaining alive within said traps. Applicant asserts that the invention should be considered as a whole, indeed, the nature of the problem solved by the Applicant is particular to crustacean bait and a method of making crustacean bait suitable for use in crustacean traps and pots. Accordingly, these words should be considered an important limitation of the present claims. In particular, improperly reading "suitable for use in crustacean traps and pots" out of the preamble reads out the Applicant's direct and particular description of the invention – a crustacean bait manufactured in a way that permits its extended use in crustacean traps and pots versus bait "line or net fishing." None of the cited prior art relates to or suggests crustacean bait manufactured for crustacean pot applications.

Applicants note that MPEP §2111.02 cites to *Kropa v. Robie*, 187 F.2d 150, 88 USPQ 478 (CCPA 1951), in which the Court held that a preamble reciting an abrasive article was deemed essential to point out the invention defined by claims." *Id.* at 481. The *Kropa* court stated "it is only by that phrase that it can be known that the subject matter defined by the claims is comprised as an abrasive article." *Id.* The Court continued stating that "Every union of substances capable *inter alia* of use as abrasive grains and a binder is not an 'abrasive article.'" *Id.* Therefore, Applicant asserts that the preamble serves to further define method of the present invention, and therefore, the method is clearly distinguishable from the combination of cited prior art.

#### The Yearley Reference

Yearley teaches a method of making a pork rind bait. The Yearly process is very specific to pork rind, and not other animal hides, as it is taught that pork rind has certain advantages as

bait material. However, Yearley teaches that the prior art pork rind bait must be kept wet or preserved in order to be stored, reused or maintained – this is the nature of the problem addressed by Yearley. To achieve this, Yearley teaches pork rind that is impregnated with a sodium sulfate composition, dehydrated with a polyhydric alcohol to remove the water and kneaded to make it pliable.

The Carr Reference

Carr teaches an artificial bait material. The bait material is a composite matrix formed of a gel material having an attractant integrally included within the composite matrix before the gel cures to its final hydrophilic, solid form. Even where the attractant is added while the gel is forming, as recited in Col. 1, lines 1-3 of Carr, it is incorporated into the matrix of an artificial gel material. The Carr final gel product is so flexible that it requires a reinforcing element formed in the matrix.

The problem addressed by Carr is specific to artificial baits, that is, those that are not manufactured of animal hides. One skilled in the art would certainly not process the colloidal solution/gel matrix of Carr in the same fashion as one would treat an animal hide. Indeed, chemical treatment of a gel matrix, such as the type disclosed in Carr, with any of the sulfates, alcohols or bleaches recited in any of Yearley, Williams, Pfleiderer, Hague, Talty or Thiele would utterly destroy the bait material. Clearly, gel formation and manufacture of artificial fishing lures therefrom is a distinct teaching from those that disclose natural animal hide treatment processes. As such, Applicant asserts that Carr is wholly irrelevant to the present application, and certainly teaches away from any reference that teaches the use of natural animal hides as bait.

The Coody Reference

Coody teaches sheepskin lure material that includes long wool or animal hair fibers still attached thereto as an integral part of the lure. Coody is intended to overcome the problems

associated with the use of pork rind, as described in Col. 2, lines 17-37. Coody teaches a chamois treated with surfactant, and teaches specifically away from treatment of the skin with cod liver oil, which can damage the skin and prevent it from absorbing dye. Col. 4, lines 59-68 and Col. 5, lines 1-12. Indeed, dyeing of the lure to brightly contrasting colors is another essential element of the Coody invention.

The present claims most certainly distinguish over Coody by reciting a crustacean bait and a process that is free of animal hair. More importantly, Coody is an inappropriate reference to base a Section 103 rejection, as Coody teaches long wool fibers of the animal as a critical and key part of the invention, see Col. 5, lines 41-52. Coody describes "leather" material as a material having its hair removed, underscoring the fact that the Coody invention requires a chamois having hair attached. In light of this teaching, there is simply no reason one would be motivated to modify this reference to achieve the present invention. Combining the teachings of Coody with any teaching that suggests hair-free animal hide would be illogical and render the Coody reference inoperable for its intended purpose.

Claim 32 depends from Claim 1, Claim 34 depends from Claim 33 and Claim 36 depends from Claim 35. In light of the above discussion of the references, Applicant asserts that Claims 1, 32 and 33 are novel and unobvious over the cited references, and therefore Claims 32, 34 and 36 are also not anticipated and not obvious in view of Yearly, Carr and/or Coody.

The Williams Reference

Williams teaches a chamois fishing lure that is impregnated with animal blood. Actual treatment or processing of animal hide of Williams is not discussed, taught or mentioned in Williams, as the Williams invention can be used with any commercially available chamois. The only manufacturing step included in Williams is the impregnation of the chamois with animal blood.

Williams is totally lacking any teaching that would render the present invention obvious. There are no animal hide processing steps taught or even implied by Williams. Applicant

discloses actual method steps. Applicant does not see how even the most skilled artisan would be able to obtain predictable results in processing an animal hide in the manner provided by the Applicant, where no animal hide processing steps are even disclosed.

Moreover, the present claims each disclose a crustacean bait that is free of animal blood, as such, Williams is an inappropriate reference in which to base an obviousness rejection.

The Pfleiderer Reference

Pfleiderer teaches a process for producing unhaired leather. The resultant Pfleiderer leather is designed for shoe, upholstery and clothing, and this intended use is critical to the Pfleiderer invention and the manufacturing process disclosed therein. As such, the uniformity of chemical treatment and degree of opening (how well the leather will take dye and softening compositions) disclosed by the Pfleiderer invention directly effects the properties of the leather. Applicant disagrees that one skilled in the art would be motivated by Pfleiderer to create the crustacean bait of the present invention, in light of Williams or not. Clearly, leather intended for use in the Pfleiderer applications is of a different variety than the animal hides processed to be submerged in water.

Nonetheless, and importantly, the Pfleiderer process required enzymatic treatment during the hair removal process. A skilled artisan would recognize that the Pfleiderer enzymatic treatment could not be used in any process carried out at an elevated temperature. In particular, any hair removal process that includes temperatures over about 100 F would destroy the enzymes. Pfleiderer does not teach any hair removal process that does not include the required enzymatic treatment.

The Hague Reference

Hague teaches a bleached pigskin product and process for making animal chews. There is no mention of using the pigskin for bait or in an environment where it is exposed to water. There is no hair removal process described in Hague, so how this reference can teach any

such method steps (especially in light of the lack of teaching in Williams, Carr and Pfleiderer) is not understood by the Applicant. Further, Hague, like Pfleiderer, requires an enzyme treatment step to remove some of the proteins from the skin and open or swell the skin. Hague then discloses several additional processing steps, none of which motivate one skilled in the art to achieve the invention as presently claimed.

The Thiele and Talty Reference

Thiele is another method of manufacturing and preserving leather, and certainly does not add or teach any modification of the above addressed references that would render the present claims obvious.

Talty discloses an edible casing. Most certainly, use of the process described in the Applicant's invention, and the other cited references, is easily distinguished from this invention. Namely, one would not use the same chemical treatment steps desirable for manufacturing leather or curing animal hides for an injected product.

A skilled artisan, even after reading each and every reference cited in the Office Action, could not obtain the Applicant's method. First, the primary references cited, Williams and Carr are totally divergent teachings, and the theories in which they each operate and the problem each are meant to address are substantially different. There is no reason to combine these references, they unequivocally teach away from each other. Indeed, one skilled in the art would certainly not process the colloidal solution/gel matrix of Carr in the same fashion as one would treat an animal hide. In addition, neither Williams nor Carr teach any of the steps of the Applicant's claims – both of these references are totally inappropriate teachings upon which to base an obviousness rejection.

The remainder of the cited references, Pfleiderer, Hague, Thiele and Talty do not suggest modification or method steps that would cure the deficiencies of Williams and/or Carr. There is no teaching in the prior art to begin one method of processing a hide, stop midstream, switch directions entirely, picking a divergent treatment path from another reference for processing

hides and switching back and forth between methods for manufacturing substantially different products.

The application is considered in form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted:

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